C.W.P. No. 13338 of 2006
Date of decision: 15-3-2007

Chander Bhan Vs. State of Haryana

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Shri Raj Mohan Singh, Advocate,
for the petitioner

Shri N.K.Sura, Assistant Advocate General, Haryana.

K.S.GAREWAL,J.

The short question in this petition is whether Sarpanch Chander Bhan of Sahupura Khadar had incurred a disqualification by being in unauthorized possession of shamlat land.

The petitioner was elected Sarpanch of Sahupura Khadar. The complaint against him was that he had furnished a wrong declaration. At the relevant time he was an accused in F.I.R. 370 dated April 19, 2000 under Sections 419, 420, 467, 468 I.P.C. Police Station City, Ballabgarh; he was in unauthorized possession of shamlat land of Arua; his election has been earlier set aside on Deep Chand's complaint vide order passed by the Magistrate on April 26, 1994 and vide order dated February 28, 1992 passed by Assistant Collector Ist Grade District Development and Panchayat Officer, Faridabad he had been ejected from the land and fined him Rs. 1000/-.

The petitioner was issued a show cause notice and filed his reply. An inquiry was conducted by Sub-Divisional Officer (Civil)

Ballabgarh who relied upon the report of the Block Development and Panchayat Officer, Ballabgarh dated May 26, 2005 in which it was found that the petitioner was not in possession of the land in question. Land was not shamlat and not capable of vesting in the Panchayat. As regards the F.I.R., the petitioner was found to have identified the person who executed the General-Power-of Attorney but the said document had not been acted upon and no wrongful loss was caused to anyone. In respect of the ejectment order dated February 28, 1992 and imposition of fine, the Sarpanch had relinquished the possession and handed it over to Panchayat. The then Sarpanch had refused to accept the fine and as there was no direction in the order to require him to receive the fine. Furthermore, the Inquiry Officer also endorsed the demarcation conducted by Tehsildar who found that the petitioner's son Devender who in possession. Devender had constructed two rooms and boundary wall, he was living separately, had a separate ration card and the house assessment record in his own name.

However, Deputy Commissioner, Faridabad on April 13, 2006 concluded that the petitioner could not continue as Sarpanch because his son Devender had been given the disputed land; fine of Rs. 1000/- had been imposed on February 28, 1992 but was paid by the petitioner only on December 21, 2005. The Tehsildar's report regarding the disputed land established that it was ownership of the Panchayat. Therefore, the Deputy Commissioner came to the conclusion that Chander Bhan was guilty of unauthorized possession over Panchayat land bearing khasra No. 30, killa No.4 measuring 287 sq yards owned by Gram Panchayat Arua. The petitioner's appeal before Financial Commissioner was dismissed on August 1, 2006.

According to the petitioner the earlier dispute had been only with regard to land situated in another part of the khasra number in question. Reference was made to aks-shajra (Annexure P-16) to clarify this matter. Even if the Tehsildar's report was accepted, it was the petitioner's son Devender who was in possession of only a small portion of khasra No. 30/4 which was some distance away from the disputed portion that had been in litigation earlier. Therefore, the petitioner could not be deprived of the sarpanchship for unauthorized possession of land by his son. It was unrelated to the earlier possession in respect of which fine of Rs.1000/- had been imposed.

The averments in respect of aks shajra Annexure P-16 contained in paragraphs 19 and 20 were replied by the respondents in the following terms:-

> " As per demarcation report land in question is the same in which the unauthorized possession of the son of the petitioner is found."

A perusal of the site plan of khasra No.30/4 and 30/7 shows the two plots. There is a plot in the North-East corner of Khasra No.30/4 the possession of which was surrendered by the petitioner and which is now in possession of some members of the Harijan community. The plot which was on the southern boundary of this field and which extended into khasra No.30/7 was the plot belonging to Parladh Singh son of Chatter Singh upon which the petitioner's son was in possession. Therefore, it is easy to see that the plot possessed by the petitioner's son is not the plot which was surrendered by the petitioner in 1992, in respect of which fine of Rs.1000/- was levied, though the fine was paid in 2005. The two plots were different.

The report of the demarcation prepared by Tehsildar Ballabgarh on November 27, 2005 seems to have been misread by the Deputy Commissioner and the Financial Commissioner to record an adverse findings against the petitioner that he was in possession of Panchayat land.

Furthermore, the allegation against the petitioner was of illegal possession of Panchayat land in Aura since 1992. This allegation was sufficient to disqualify him from standing for the office of Sarpanch of Shapura Khadar. Therefore, his election could have been challenged through an election petition but was never so challenged.

Supreme Court of India in State of H.P. Vs. Surinder Singh Banolta (Civil Appeal 5186 of 2006 decided on 24-11-2006 has held as:-

> "Section 163 of the Act provides for filing of an election petition on one or more grounds specified in Sub-section (1) of Section 175 thereof. Clause (a) of Sub-section (1) of Section 175 of the Act inter alias lays down a ground for setting aside of an election if on the date of the election the elected person was not qualified or disqualified to be elected under the Act.
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> It is no doubt true that Section 122 contemplates both the the situations, viz. Where a person shall be disqualified for being chosen as also for being an office bearer of Panchayat inter alia if he has encroached upon any land belonging to any authority mentioned therein. In view of the language of the said provision, we are of the view that whereas an issue falling under clause (1) of Sub-section (2) of Section 122 of the Act must be determined before the Authorized Officer, any order of encroachment passed after the election process is over would be determined by the Deputy Commissioner.

The provisions of the Act, as noticed hereinbefore, have been enacted pursuant to or in furtherance of the constitutional mandate contained in Part IX of the Constitution of India. The provisions of the Act, therefore, are required to be construed strictly in terms thereof. Clause (b) of Article 243O of the Constitution of India mandates that no election shall be set aside save and except by an order passed by the Authorized Officer. In our considered opinion, Section `122 of the Act must be read in the light thereof. Section 162 of the Act expressly provides for the exclusive jurisdiction of the Authorized Officer to determine the existence of otherwise of any ground enumerated in Section 175 of the Act.

Once, thus, a person is declared to be an encroacher prior to the date on which he has been declared as elector and if the said order has attained finality, the question as to whether he stood disqualified in terms of the provisions of Section 122 of the Act, in our opinion, must be raised by way of an election petition alone. If the submission of Mr. Attri is to be accepted, the same may result in an anomalous position.

If a candidate or a voter had the knowledge that the elected candidate was disqualified in terms of Section 122 of the Act, he may file an application. The order of eviction may come to the notice of some other person after the election process is over. A situation, thus, may arise where two different proceedings may lie before two different authorities at the instance of two different persons. Two parallel proceedings, it is well settled, cannot be allowed to continue at the same time. A construction of a statute which may lead to such a

situation, therefore, must be avoided. It will lead to an absurdity if two different Tribunals are allowed to come to contradictory decisions.

Furthermore, it is a well-known principle of law that where literal interpretation shall give rise to an anomaly or absurdity, the same should be avoided. (See Ashok Lanka Vs. Rishi Dixit (2005) 5 SCC 598 and M.P.Gopalkrishnan Nair Vs. State of Kerala (2005) 11 SCC 45)

It is also well-settled principle of law that in case where a statute is found to be obscure the same must be interpreted having regard to the constitutional scheme. In a case of this nature, the doctrine of purposive construction should be applied. (See. Bombay Dyeing & Mfg. Co. Ltd. (3) V. Bombay Environment Action Group & Ors. (2006) 3 SCC 434, Nathi Devi V. Radha Devi Gupta (2005) 2 SCC 271, Lalit Mohan Pandey v. Pooran Singh & Ors (2004) 6 SCC 626, Indian Handicrafts Emporium & Ors. Vs. Union of India & Ors (2003) 7 SCC 589 and Balram Kumawat Vs. Union of India & Ors. (2003) 7 SCC 628).

It is also well-settled that the entire statute must be read as a whole. The relevant provisions of the Constitution as also those in the statute must, thus, be read harmoniously. (See Bombay Dyeing (supra) and Secretary Department of Excise & Commercial Taxes and Others Vs. Sun Bright Marketing (P) Ltd. Chhatisgarh and Another (2004) 3SCC 185). So, read we are of the opinion that the Division Bench of the High Court was correct in its view. The matter might have been different if respondent No.l was declared to be an

enroacher after the election process was over and, thus, becoming disqualified to continue to be an office bearer of Panchyat or Zila Prishad."

Resultantly, the petition is allowed, the petitioner's removal from the post of Sarpanch is quashed and he is held entitled to continue as Sarpanch. Consequently Annexures P-13 and P-14 are also set aside.

(K.S.GAREWAL)
JUDGE

(AJAI LAMBA)
JUDGE

March 15, 2007
RSK